



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF JULY 22, 2004**

CALL TO ORDER: Chairperson Weaver called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Weaver, Vice Chairperson Wieckowski, Commissioners Harrison, Lydon, Natarajan, Sharma

ABSENT: King (excused)

STAFF PRESENT: Jeff Schwob, Interim Planning Director
Larissa Seto, Senior Deputy City Attorney II
Norm Hughes, City Engineer
Momoko Ishijima, Planner I
Christine Daniel, Deputy Director-Development & Environmental Services
Alice Malotte, Recording Clerk
Chavez Company, Remote Stenocaptioning
Walter Garcia, Video Technician

APPROVAL OF MINUTES: Regular Minutes of July 8, 2004 were approved with the following correction:

Page 8, Sharma speaking: " what's going to survive?"

Chairperson Weaver asked if anyone in the public wished to speak on Item 3, Linda Vista. She asked if the speaker was in favor or against, then stated that it would stay as one of the public hearing items.

CONSENT CALENDAR

THERE WERE NO ITEMS ON THE CONSENT LIST.

PUBLIC COMMUNICATIONS

ORAL COMMUNICATIONS

Chairperson Weaver announced that any unwanted physical contact between participants, including spitting, could be punishable for up to six months in the County jail with a one thousand dollar fine.

PUBLIC HEARING ITEMS

Chairperson Weaver announced that Item 1 and Item 2 would be heard at the same time.

Item 1. **HILL AREA INITIATIVE ZONING TEXT AMENDMENTS (ZTA) - Citywide - (PLN2004-00029)** - to consider a Zoning Text Amendment modifying regulations for the O-S (Open Space) Districts, P-F (Public Facilities), P-D (Planned District) and other zoning regulations (definitions and development standards), and the Development Policy for the Hill Area to implement the General Plan Amendment enacted by the Hill Initiative of 2002

(Measure T). This item will also delete the Ridgeline Open Space District as it is being superceded by other zoning regulations to implement Measure T. A Negative Declaration has been prepared and circulated for this project. (Continued from June 24 and July 8, 2004).

MODIFICATIONS TO STAFF REPORT:

Amend page 5, Hill Open Space Land Uses section as follows.

Hill Open Space Land Uses (Exhibit A-5): *Proposed permitted and accessory uses are identical to those of the Hill Face Open Space district. Uses requiring Zoning Administrator approval are also the same with the addition of kennels, commercial stables and riding academies to those allowed in the Hill Face.*

Amend page 11, Exhibits section as follows.

Exhibits: Exhibit A-1a Toe of the Hill definition
Exhibit A-1b Ridgeline and Hilltop definition

AMENDED EXHIBITS:

Modify **Exhibit A-1** to **Exhibit A-1a**.

Add Exhibit A-1b.

Exhibit A-1b.

City of Fremont Hill Initiative
Zoning Text Amendments
Definitions

Article 1 (Definitions) of Chapter 2 (Zoning,) Title VIII (Planning and Zoning) of the Fremont Municipal Code is amended to read as follows:

Sec. 8-2185.8. Ridgeline-, main.

"Ridgeline, main" shall mean the visual ridge as established from a point of origin a distance of one and one-half miles from the ridgeline. The point of origin shall be located along a line lying perpendicular to Mission Boulevard and Warm Springs Boulevard. The point of origin of the ridgelines for Niles Canyon shall be located along Nile Canyon Road and shall be a visual ridge located along a line perpendicular to Niles Canyon Road. The point of origin for the ridgeline for Mission Pass shall be located along a line lying perpendicular to Interstate 680.

Sec. 8-2158.8.1. Ridgeline, other.

"Ridgeline, other" shall mean one of the other ridgelines above the toe of the hill. These include the prominent ridgelines located easterly of the main ridgeline as viewed from public places as well as those tributary or branch ridgelines of both the main ridgeline and the other prominent ridgelines.

Sec. 8-2153.6. Hilltop.

"Hilltop" shall mean a prominent location above the Toe of the Hill, which is noticeably higher in elevation than the immediately surrounding terrain. Hilltops may occur on or along a ridgeline but also may occur below a ridgeline in the form of knolls, rounded hills as well as the top or peak of a hill.

Modify Exhibit A-18 Sec. 8-21821(e) "**visual plan**" to "**visual plane**."

Interim Planning Director Schwob reviewed the corrections and changes, above, and other changes of importance, as follows:

- **Exhibit A-1, Section 4** refined the process for people who came forward and requested changes in the Toe of the Hill line in the future.
- **Exhibit A-10a** changed the term “legal nonconforming lot” to “legal lot of record.”
- **Exhibit A-10b** included procedures concerning how projects within open space districts were reviewed. An addition or new home, that totaled 7,500 square feet or less and was located above the Toe of the Hill, would be reviewed by staff, but might be referred to the Planning Commission if issues arose. When 7,500 square feet was exceeded, the Planning Commission would review it. Accessory structures of 600 square feet or less would be reviewed by staff; more than 600 square feet would be reviewed by the Planning Commission.
- **Exhibit A-10c** was amended to indicate that the Hillside Combining District Provisions were applicable within Open Space Districts that were above the Toe of the Hill.
- **Exhibit A-18** reflected a new proposal that amended the Hillside Combining District to reflect the provisions of Measures A and T were incorporated into the code including relevant provisions of the Development Reserve Overlay (DRO).
- **Informational Exhibit 4** showed how all the provisions of the existing Hillside Development Policy.
- **Zoning Text Amendment Proposals** would allow for some discretion when reviewing future developments above the Toe of the Hill with respect to Measure T, as some measures conflicted. New submittal requirements for visual analysis would include photos keyed to the map, which would allow staff to provide direction; installation of story poles; and provide either a 3-D model and/or photo simulation. Areas with a slope less than ten percent could be set aside for usable open space and Floor Area Ratio calculations and impervious surface calculations would be required.

City Engineer Hughes stated that Toe of the Hill definition was, “The line along the base of the hills where the natural grade first became 20 percent or more.” The 1956 aerial topography had been reviewed to ascertain the natural grade in areas where grading had changed the natural grade. He moved to the map to discuss the first 20 percent natural grade as it pertained to the Avalon and Ponderosa communities. He pointed out the first 20 percent grade that ran from the Milpitas border to Warren Avenue. A first 20 percent grade line was adjacent to I-680 to Warren Avenue. A second first 20 percent grade break occurred further east on the hillside within the Avalon and Ponderosa developments along Rancho Higuera Road, 4,000 feet away. The two first 20 percent grade lines were connected by drawing a line at the top of the grade break between the two first 20 percent lines. Two 100-foot gap and projection issues within Avalon were changed, after review. These were pointed out on the map. The first 20 percent grade line at Mission Clay Products site in Niles was also changed following the established principles.

Interim Planning Director Schwob reiterated that a majority of the voters had approved Measure T and its provisions had to be incorporated within the General Plan by law. However, it was up to the City to develop the more precise zoning provisions. The establishment of the Toe of the Hill line impacted the City’s General Land Use maps and zoning maps. Parcels above the Toe of the Hill line had different land use designations and zoning districts from those located below the Toe of the Hill line. Parameters and discretion was limited as a result of Measure T. Some of the long-standing City practices would need to be changed to conform to Measure T and, conversely, if those practices were stricter than Measure T, the City would not have to change them, i.e., height limits. Measure T allowed a residential structure to be up to 35 feet in height, whereas, the City, historically, had a height limit of 30 feet.

Commissioner Harrison assumed that, if the same facts and principles were given to three different geologists/engineers, the same line, more or less, would be produced. He asked what the variables or assumptions were that City Engineer Hughes had made when calculating the Toe of the Hill line. What were the procedures that would allow an applicant to challenge the Toe of the Hill and would the cost be huge? Were the three principles set in stone?

City Engineer Hughes replied that three principles were used: The 100-foot gap or projection, the graded slopes and the connection of the two Toe of the Hill lines. The 2002 topographic survey was prepared with five-foot contours and the slope was analyzed over a distance of 40 feet. A reasonable accuracy was created for the current 500-foot scale map. The 100-foot principle was created to eliminate very minor variations in the hill face appearance that could not be seen from any distance. When considering clearly manufactured slopes, the 1956 aerial topography was used to ascertain the original slope grade, which caused the line to be drawn higher in some instances. In no case, was the 1956 aerial topographic map used to draw the Toe of the Hill line lower or to look for areas that might have been graded in the middle of a subdivision. The two Toe of the Hill lines were connected at Torogas Creek. The procedure that would allow the challenging of the Toe of the Hill line included the hiring of a licensed land surveyor or civil engineer by the applicant to perform a topographic survey at a larger scale than the City's 500 scale map used by staff at this time. He expected that, in most cases, the changes would not be discernable at 500 scale, but might move the Toe of the Hill line up or down as much as 20 feet. The cost was normally a part of the development proposal, so no additional cost would be forced upon the applicant. Yes, the three principles would have to be used for any new topographic survey.

Commissioner Lydon asked for clarification concerning which additions to existing homes, which new homes and which accessory structures that were above the Toe of the Hill line would be reviewed by staff. It seemed that the property owners above the Toe of the Hill believed that they would be severely disadvantaged when considering those kinds of projects. Were they or were they not?

Interim Planning Director Schwob replied that if an addition to an existing home increased the total size of the home to under 7,500 square feet, it would be reviewed by staff in accordance with the rules and regulations of their specific zoning (in the case of Avalon, a planned district) and the provisions of Measure T. If it complied with those provisions, it would be approved and a building permit would be issued. If the home increased in total size to more than 7,500 square feet, the same type of review would be performed by staff and it would be brought before the Planning Commission for approval. Accessory structures exceeding the 600 square foot threshold would be reviewed by the Planning Commission; if they were under the 600 square foot threshold, it would be reviewed by staff. It was important to note that the rule of 7,500 square feet and 600 square feet for accessory structures was a long-standing City Council policy. However, for the homes above the Toe of the Hill, the Measure T provisions had to be considered, such as visual safeguards. Height limits in parts of Avalon were at 25 feet and were more restrictive than City or Measure T regulations.

Commissioner Natarajan asked if both developments would continue to be zoned Planned District (PD) and what the existing land use designations were.

Interim Planning Director Schwob replied that she was correct. For Ponderosa and Avalon (except Village IV), the land use designations were a combination of Open Space and Hill Face Open Space. The new designation would be Hill Face Open Space for all of the area.

Commissioner Sharma read, "The Ordinance maintained existing use of the hill for agriculture, outdoor recreation, very low density residential and open space." It seemed to say that nothing would change for the existing homeowners.

Interim Planning Director Schwob clarified that Measure T allowed for continued use of existing properties and the City was proposing in its zoning code amendments to allow for the rebuilding "in kind" if a home was destroyed by a natural force. However, if a new or larger home was to be built, it had to meet the provisions of Measure T.

Commissioner Sharma asked if Measure T required the rezoning existing properties.

Interim Planning Director Schwob stated that the line existed and "now, it was being put on paper." When a property was above the Toe of the Hill line, land use designations were applied that were appropriate for properties above the line, i.e., Hill Open Space, Hill Face Open Space, Institutional Open Space. The zoning must match up with the General Plan, as it now existed with the addition of Measure T.

Senior Deputy City Attorney Seto clarified that the General Plan land use designation for most of the Avalon and Ponderosa area was already in Open Space-types of land use designations. Those developments would retain their original Planned District zoning and would not be rezoned. Provisions would be added to the Planned District sections of the Municipal Code that indicated property in a Planned District located above the Toe of the Hill must comply with the requirements of Measure T.

Commissioner Sharma wondered why the homeowners from these two communities were so fearful. It seemed that nothing would change, in terms of practicality. Was there a lack of communication? The Measure T provisions must be followed and he assumed that staff had been following those provisions, although they had not officially become a part of the General Plan.

Interim Planning Director Schwob answered that he was correct.

Chairperson Weaver opened the public hearing and announced that each person would be allowed two minutes to make his/her statement.

Stephen Ho, Avalon resident, stated that only the City Engineer could speak the language of "this big tongue-load of Measure T." He believed that the 100-foot resolution was too high. He wanted the average, sustaining distance to be used to locate the Toe of the Hill line. Lower resolution should be used, which would eliminate the jagged lines and gaps seen on the current map and produce a smooth line that everyone would be happy with.

Goney Sandhu, M.D., stated that he had read the complete report and was surprised that it was very different from what Measure T had stated. The Commission had a copy of his questions to staff and the answers. Measure T did not describe "knolls." However, the new provisions stated that every small knoll would have a ridgeline and were defined as a hilltop (because, he believed, Measure T did not allow building on hilltops). The new City provisions that were stricter than Measure T would not be advantageous to the applicant. The 100-foot assumption should be decided by the property owner.

Edmund Kong, 30-year resident, stated that his entire fortune had been invested in the Avalon community. In his opinion, he would "lose half of his fortune", because his property would be located above the Toe of the Hill line. He noted that his property was lower in elevation than other properties that would be located below the Toe of the Hill line, as it was currently delineated.

Commissioner Lydon asked the speaker to expand on his comment that “the drawing of the line cost you half your fortune.” He asked if the speaker had suffered any loss in value on his property and if he believed that his home would be devalued 50 percent.

Mr. Kong explained that the many restrictions would discourage people from buying his property, which would make his property worth less. He assumed that with less people interested in buying his property, it would be worth less. The 50 percent loss was his worst-case assumption.

Commissioner Sharma asked how a potential buyer might want change the speaker’s beautiful property that would, somehow, impact the value. How would the Toe of the Hill line affect the view from his property? He noted that the Planned District zoning for the Avalon development had placed many restrictions on the properties before Measure T was approved.

Mr. Kong replied that many new owners wanted to change a home to increase the value and the beauty of that home. The Measure T criteria would not allow the changes that a potential homebuyer might want to make. He did not believe the Planned District restrictions were as burdensome as the Toe of the Hill line would be.

Jerold Langenbach stated that he wished to speak on Item 3.

David Cheng, Avalon resident, opined that any disclosure, when selling a home, would cause a buyer to feel a “mental hold-back,” and it would be seen as a negative. He asked that the spirit of Measure T be focused upon rather than the definitions, as he also believed that property values would decrease. He stated that the homeowners were the opponents of the current City proposals, but they were the proponents of Measure T and locating the Toe of the Hill line above the Avalon community would not provide any less protection for the hillside than if it were located through Avalon.

Commissioner Natarajan asked if the speaker understood that the existing General Plan designation was Open Space for his property.

Mr. Cheng apologized for not understanding the meanings of redesignation and rezoning and “Open Space Hill or Open Space Flat Area.”

Commissioner Natarajan speculated that understanding the terms and obtaining clarity was critical for the homeowners, because that was the issue. Nothing would be different; the zoning would remain the same, the General Plan designation would remain the same or similar.

Mr. Cheng understood differently. He stated that perhaps the residents did not understand the legalities of the language.

Commissioner Lydon asked if the speaker could accept that there would be no zoning change, as described by Interim Planning Director Schwob and Senior Deputy City Attorney Seto. He wondered if the differences between the residents and staff were a matter of understanding and not a matter of fact. He understood that the speaker believed his neighbor’s opinions and arguments, but did the speaker have any reaction to the definitions of the proposals that had been given by staff?

Mr. Cheng saw a clear change without doubt, and he believed the information that he had received from emails circulated around the community. He understood that there were different kinds of open space designations and, in his opinion, this change would benefit no one.

Commissioner Harrison asked staff to address the speaker's concerns.

Interim Planning Director Schwob stated that two layers existed within the City's scheme of regulations. One was the General Plan, which was general by nature and included a series of land uses labeled Open Space and Hill Face Open Space in the Avalon and Ponderosa areas. If those areas had been zoned Open Space to correspond to those land uses, they would have allowed for the construction of a single-family home (through a Conditional Use Permit), agriculture and recreation uses. However, the City chose not zone Avalon and Ponderosa Open Space, but instead to zone them as Planned Districts. Those Planned Districts specifically set forth the types of uses allowed in that particular area, i.e., one home to a lot, secondary dwelling units. In addition, the PD zoning established, setbacks, height limits and dozens of other regulations. Property owners would still have the right to expand their homes but they must be in compliance, not only with all of the PD regulations, but with Measure T, as well, which the voters had approved. The visibility from a public place must be minimized and less than 20 acres could not be subdivided. Most of the lots in Avalon and Ponderosa were less than 20 acres but remained legal lots of record. Measure T did not change the City's existing rules for property owners, but it did limit further development in the hills.

Commissioner Sharma noted that some of the speakers had stated that they had supported and voted for Measure T, but it seemed that they did not want it implemented.

Chairperson Weaver called for a recess at 8:15 p.m.

Chairperson Weaver called the meeting back to order at 8:30 p.m.

The public hearing continued.

Dave Yun recalled a Commissioner suggesting that a home destroyed by fire or earthquake should be rebuilt to the provisions of Measure T, which would be one more worry for the property owners above the Toe of the Hill. He understood that Ponderosa residents had sent a letter to the City that stated their concerns were similar to the Avalon community's concerns. When two communities of highly educated, influential residents were mobilized against the change in the Toe of the Hill line, a warning flag was raised. They were asking that nothing be changed.

Li May Phipps stated that she had not intended to speak. However, after looking at the documents, she knew they were beyond her ability to understand. The City already had enough restrictions concerning property owners, and she questioned why more were needed, which would make life more complicated and difficult. Concerning the possibility of declining property values, many of these homes were purchased to provide peace of mind during retirement. She believed the fear was psychological and that people were worried.

Thu-Thuy Truong, Ponderosa resident, stated that this was the first time she had participated in City activities. Her knowledge of Measure T was through emails from her neighbors. She agreed that the spirit of Measure T should be focused on. If there were really no changes, why create another layer of bureaucracy that was for nothing. She agreed that the value of the properties could decrease.

Thuong Vu Nguyen, Avalon resident, asked that the Avalon community be exempted from above the Toe of the Hill map. He understood that Measure T promised that the rights of existing homeowners would be unchanged, since the homes had existed several years before Measure T was written. He suggested that, in the future, officeholders with hidden agendas could use the same methods to take the property rights of the homeowners and their children and their children's children away from them. With the threat of decreasing property values, it was "naïve to believe that the several thousand people who lived in those

homes would stay idle when we are pushed against the wall.” They would be willing to take legal action, as they felt that they had no other choice.

James Gearhart, M.D., stated that he had been a proponent of Measure T and he, along with the attorney for the Friends of the Hill Area Initiative, agreed with the hard work and diligence that City staff had performed by informing local groups through multiple study sessions and multiple public hearings. After one and one-half years after Measure T became law, now was the time to incorporate specific changes required by Measure T into the Fremont General Plan, as required by State law. Fifty-eight percent of the community had spoken by passing Measure T. He asked for no more delays, postponements or packed audiences. The spirit of Measure T was to preserve the special character and identity of the City of Fremont and its beautiful hills.

Jana Holt stated that she was a confused Avalon homeowner. Tonight they had been told that there was nothing to worry about. Time and effort, meetings, studies by consultants told her that something was there and changes were being made that were not understood. The residents would not be able to explain the provisions, and neither would real estate agents who would be talking to buyers who might prefer to look at properties that “did not have this problem.” With declining values, all would lose, including the City. If legal action was taken, the homeowners would be paying twice, because their taxes would be used for the City’s opposition. She asked what the standard for “visible” was.

Chairperson Weaver promised to provide that answer after the public speakers had been heard.

Ena Kong stated that she had been a resident of the City since 1978. She and her husband had had many sleepless nights, since learning about the Toe of the Hill line, because they worried about the retirement they had expected their home to help with. They loved the hills and would never damage them. The hills needed to be protected, but their homes needed protection, also. She asked that staff come to Avalon and explain exactly what Measure T and the Toe of the Hill line entailed. She asked that all explanations be in writing using non-technical terminology.

Judy Fan stated that, unfortunately, she had purchased a home in Avalon in December. Her son was getting married soon, and she had hoped to have an addition built to accommodate guests. She understood that Measure T had to be implemented, but Avalon was in existence before Measure T, so it should be exempted. She asked that the Commissioners vote as though they were also residents of Avalon.

Shanker Munshani noted that Stephen Ho, a previous speaker, had suggested that a 40-foot measurement distance be used rather than a 100-foot measurement. Measure T stated that one house could be built on 20 acres; therefore, it could be argued that the measurement distance should be 20 acres. Avalon residents believed that being located above the Toe of the Hill was not good. Some of the Avalon properties were less than 100 feet apart, yet were located above the Toe of the Hill.

Gene Yamasaki stated that staff had visited him to discuss the Toe of the Hill. Nothing was accomplished, because it was a one-sided conversation. He recalled that the Avalon residents were contacted by staff about six weeks ago concerning a meeting with the residents. Nothing else had been heard. He suggested going back to the table with staff and making a decision that would satisfy both sides. He did not believe that an independent engineer or consultant would necessarily come to the same opinion, as the City Engineer believed. He wondered who provided the check and balances for staff; it was not the Commission, as it listened to staff. He stated that his wife had submitted 35 questions to staff and the answers from staff did not answer her questions. He agreed that fear would drive the value of the homes.

Susan Stone, Avalon resident, suggested that a second chance should be provided to get organized and to get answers to the problems that had been brought up. She stated that she wanted to build a gazebo at the back of her house where the land rose straight up. She also had a hill at the front of her property so that only her nearby neighbors would see anything. It sounded to her as though she would not be able to construct her gazebo. She wondered if a pool and/or pool house would be allowed (or, perhaps, a tent in the backyard for her daughter). She agreed that the issues were confusing and that time needed to be taken to make everything clear to the Avalon residents.

Commissioner Lydon asked if she could elaborate on her interaction with staff that had left her confused.

Ms. Stone replied that she had a steep hill both in front and behind her home, and she was asking if she could install a gazebo at the rear of her property. She had not gone to the City about her gazebo, because she did not know how to do it.

Rod Fan reminded the Commission that he and his wife had bought their Avalon residence in December. If he had known about Measure T, they would not have bought the house, which proved to him that Measure T would affect the value of the homes in Avalon. When he went to Planning in April for a permit to add onto his home, he was told that, because he was in Avalon, he would have to pay a 1,500 dollar fee, submit 15 copies of drawings and wait to be scheduled for a public hearing. He was also told that within a month, the process might be reduced and he would be able to move faster. After a month, no decision was made, so he submitted everything at the end of June and his first meeting was scheduled for the 28th of July, which would not meet his need for an addition to accommodate his son's wedding guests.

Mary Tsing stated that she had been an Avalon resident for six years. She had learned of this issue from her neighbors and asked that the Commission reconsider excluding Avalon from above the Toe of the Hill.

Howard Davis, Ponderosa owner, believed he could see a common thread connecting many of the speakers' fears, which was a need for staff to articulate the changes and restrictions as they applied to Avalon and Ponderosa, with respect to Measure T. He would prefer that it be done in writing, so that one could look at it and absorb it at leisure. It seemed that there had been a lot of misinformation.

Betsy Yamasaki was disappointed that staff had not taken the time to work with Stephen Ho and some of the homeowners concerning possible alternatives to the Toe of the Hill line, which had been requested several times. She stated that she had not seen a 1956 map. In her opinion, Highway 680 was not the first 20 percent grade. She stated that she had sent photos of the Avalon area taken before it was built, which showed a very gentle grade. She wondered why Avalon and Ponderosa were the only planned communities affected by the Toe of the Hill line. In documents given to her by staff, it stated that property above the Toe of the Hill required an easement to be recorded against the property and stating that future development must also comply with the Hill Area Initiative. This was a negative aspect of the property and all residents were worried about it. She asked that staff work with the two communities to arrive at a compromise to avoid legal action.

Susan Gearhart stated that it was heartening that everyone in the room cared about the hills of Fremont and how they were maintained. She stated that the new submittal requirement handout for projects in the hill area was a great idea, as they would help the developer to design a project by specifically addressing the performance criteria as early as possible in the design stage of the project, which should also prevent 16,000 square foot homes from coming to the City too soon and should save that person time and money. Projects should

blend into the hills, not the hills into the project. She also agreed with the Floor Area Ratio, which would better utilize the available land. If the same principles were used throughout Fremont and those principles were used in drawing the line, without looking at houses or properties, then the best consistency would be achieved.

Bob Murray stated that he had expected to be bored, but had found the meeting to be quite entertaining. He had received a letter that he did not understand. He had an "S" turn in his yard, which he believed meant that he was above and below the Toe of the Hill line and he was not sure that his chair would be located above the Toe of the Hill or below it. He had heard speakers who were worried about not having control of their land, the speakers who would not be able to accommodate guests for their son's wedding and he had heard of someone who was told to go back to the drawing board after presenting a plan for a house on his land. He emphasized with all those people. He admitted that he could not understand the explanation of the Toe of the Hill line as shown on the map earlier in the evening by City Engineer Hughes. He stated that he had voted for Measure T and had always voted green. However, he now felt stupid, because he realized that he did not understand the Measure and stated that he had learned his lesson and he would not vote green ever again.

Dr. Herman Suryoutomo stated that he had also voted for Measure T; however, the problem was with the arbitrary implementations. He compared the difference between the 100-foot measurement and the 40-foot measurement, as being like a camel with two bumps. He also felt that the two first 20 percent grades needed to be explained further. He also had a broker's license and he believed that disclosure of this sort would cause potential buyers of Avalon properties to look elsewhere.

Shawna Bateman believed that all speakers were sincere and were concerned about their homes. She read from Measure T, Section C that stated areas now designated residential in the hill area would be redesignated as Hill Open Space. The concern was that it would be more expensive, more inconvenient and some things would not be allowed under Measure T, which seemed "scary, wrong, unfair." She asked if staff would be willing to sit down with the residents and tell them if a swimming pool would be allowed, would it cost twice as much to go through the process, how long would it take to obtain approvals. She asked that staff be patient and spend some more time to alleviate their fears and to help the residents to be more comfortable with Measure T.

Mei Ying Wu stated that she had three points to make: The first was the measurement, which was not understood by many residents. The second was the issue of decreased value, which she also believed that buyers would shun properties above the Toe of the Hill line; the third was that the government's role was to protect the people rather than to create problems for them.

Dave Theyer stated that his property would be on both sides of the Toe of the Hill line. The fear of decreased values and implementing the spirit of the Measure were valid. Arbitrary decisions were being made by drawing lines through properties, through the community and through the City that were dividing the community, rather than bringing it together. By moving the line 20 or 30 feet, all these problems would be resolved. He asked that a solution be sought, rather than creating problems.

Ramesh Joshi opined that each meeting added to the confusion. Measure T needed to be explained to the Avalon and Ponderosa communities, then the decision about the Toe of the Hill line could be made. The residents would like to maintain the same rules and regulations that were in effect at the time the homes were built. He presented a revised petition with more signatures of people who were afraid of the effects of Measure T. He asked that another explanation be given to the residents of both communities.

Chairperson Weaver read the names of people who had filled out speaker cards but had not wished to speak:

Jennifer Yin
Steven Meeks
Randy Broweleit
Ronny Soetarman

Mala Utamsingh and Toral Patel
Kal Siddig
Sharon Murray
Giao Nguyen

Elaine Richardson
Wai-Kai Chen
Shirley Chen

Subhash Tandon, two-year Avalon resident, questioned his decision to vote for a measure that would help protect the hillside without affecting the current residents in a major way. His property had moved from below to above but he was not sure why. He questioned the implementation of the Measure and asked that the Commissioners take all of the comments into consideration while making their decision.

Chairperson Weaver closed the public hearing. She asked that the three questions raised by the speakers be addressed, of which one was the standard for visibility.

Interim Planning Director Schwob replied that Measure T had a section called Visual Safeguards that required that the visual aspects of a project be minimized as much as possible as viewed from public places. The construction could also be screened by vegetation, and that building materials should be used that blended into the natural hillside settings, grading should be minimized.

Commissioner Harrison asked if “New or reconfigured parcels” from the Visual Safeguards, Section 12, Page 5, A applied to an existing house. He asked if it would affect adding a room or gazebo. Could landscaping be used to help to screen a project from view? The exception was agricultural uses. Did that mean a barn or garden sheds?

Interim Planning Director Schwob replied that “reconfigured parcels” applied to a lot line adjustment with an adjoining property owner. In Avalon and Ponderosa, little visual impact would be created, because the lots were developed and it would not matter if the lot lines were moved a few feet. Likely, the 20+ acre parcels in the hills had been in mind when that section was written. Yes, landscaping could be used as screening. The intent was to exempt farm structures on a larger property.

Commissioner Sharma asked how a home in Avalon that was close to the freeway could adhere to the visibility requirement of Measure T when constructing an addition. Would that homeowner be allowed to do anything that was within the current regulations?

Interim Planning Director Schwob answered that if a home was already visible from 680, an addition would not change the current visibility. However, painting a home or addition orange might be something staff would be interested in. The color, roofing or glazing would have to be minimized to avoid creating a new visual impact. Generally, any addition would be allowed.

Commissioner Lydon asked how the visibility requirements for the Avalon and Ponderosa residents would change from what existed at this very moment to what it would be, if these items were approved.

Interim Planning Director Schwob cited, as an example, the homeowners who wanted to add approximately 300 square feet to the back corner of their home. At this time, every project must come before the Planning Commission for a decision. Whereas, after approval, it would be reviewed and approved by staff and the building permit issued.

Commissioner Lydon asked if the permit process would be smoother if these items were approved and visibility would generally not be an issue. It seemed that the speakers believed

they would have to “go through more hoops, more dollars” to add to or improve their properties and that did not seem to be the case.

Interim Planning Director Schwob agreed; in most cases, particularly, for smaller additions that did not bring the total square footage of the home to above 7,500 square feet. Right now, a homeowner was required to apply for a Planned District Minor Amendment (the fee mentioned by the speaker), which required “getting in line, if you will, with everybody else,” and it must be heard by this body in a public hearing. Under the proposed process, the application would be submitted, it would be reviewed within two weeks and, if there were no issues, he would be issued a building permit.

Commissioner Harrison asked about the homeowner who wanted to build the gazebo. He suggested that the homeowner come into the Planning Department to obtain information about these issues.

Interim Planning Director Schwob was not familiar with her lot; however, according to her description of her lot, the issue may be that the slope was over 30 percent, which made it constrained land, and nothing was allowed to be built on constrained land under existing regulations. Grading might also be an issue under existing ordinances and rules. It did not sound like it was a visibility issue.

Chairperson Weaver asked staff to address the issue of a new pool.

Interim Planning Director Schwob replied that, typically, a pool was not built on a steep slope. A pool would be fenced and would not create a visible impact. If it pushed up against a hill or slope, grading issues might preclude the pool being located in a particular area or might limit the size.

Commissioner Natarajan asked if the information in Exhibit 5 had been made available to the public. It was an excellent compilation of many of the questions and their answers. She suggested that it be added to the City web site to make it easily available to the public. She stated that she had many questions that this exhibit had answered. She felt that it was important that everyone in the audience obtain a copy, either through the web site or through the Planning Department.

Interim Planning Director Schwob stated that it had been made available to the Avalon Homeowners Association and everyone else who had requested it.

Commissioner Natarajan asked specific questions, concerning both Ponderosa and Avalon developments, as the Planned District zoning existed today under Measure A and how it would exist under Measure T. **Interim Planning Director Schwob** answered each question:

- **Question:** Any restrictions under the existing PD zoning in terms of the size of the house?
Answer: The size of the house would be determined upon the setback provisions of the PD zoning district and the buildable area of the lot. Unless the PD had a rule that limited size, which Avalon did not have.
- **Question:** Under all scenarios, was size an issue that was not consistently looked at?
Answer: Yes. However, there were provisions in Measure T that spoke to size limits, but they were typically addressing the 20-acre or larger lots. Preexisting lots were not affected. It was a discretionary decision concerning the size of the home on the lot.

- Question:** The height restrictions? In fact, the PD zoning height restrictions were more stringent than Measure T restrictions.

Answer: That is correct.
- Question:** What was the review process for homes under the Toe of the Hill, above the Toe of the Hill and the PD zoning requirement?

Answer: The process was the same with regard to PDs, which depended upon the size of the home, as to the level of review, not on whether it was below the Toe of the Hill.
- Question:** Whether a property was above the Toe of the Hill or below the Toe of the Hill, within the Planned District, the review process was consistent for houses less than 7,500 square feet and houses greater than 7,500 square feet.

Answer: That is correct, and also the current practice. The larger homes over 7,500 square feet were reviewed by the Planning Commission and less than 7,500 square feet were reviewed by staff and that process remained consistent.
- Question:** Was this one process that was changed after meeting with the homeowners? With the PD zoning in place, was the review process consistent for all houses in Avalon and all homes in Ponderosa, whether they were above or below the Toe of the Hill and would vacant lots undergo the same process?

Answer: That is correct. Initially, all projects above the Toe of the Hill were to be reviewed by the Planning Commission.
- Question:** Additions to existing homes would be consistent, whether the home was above or below the Toe of the Hill. This would be based on the total size of the home and whether it was more than 7,500 square feet or less than 7,500 square feet and if an accessory structure was more than 600 square feet or less than 600 square feet.

Answer: That is correct, based on the total size of the house or accessory structure.
- Question:** Subdividing could not be done under Measure T without having land that was at least 20 acres. Given that these communities were zoned Planned Districts and they had a certain maximum number of homes, would the process to subdivide always include a request that City Council amend the zoning.

Answer: If Measure T did not exist, the property would have to be rezoned and a new development plan would have to be shown for the new lots. Under Measure T, that right was no more, unless the lots were 20 acres or more in size.
- Question:** How many lots were larger than 40 acres in Avalon?

Answer: Only the open space parcels were more than 40 acres.
- Question:** Could the individual lots in Avalon be subdivided?

Answer: No.
- Question:** Was there any difference between what currently existed in the PD zoning before Measure T was included in the General Plan and what was now in Measure T?

Answer: Under Measure A, minor encroachments onto constrained land were allowed, which were slopes of 30 percent or more. Under Measure T, no development would be allowed on constrained land.
- Question:** Was the process to allow a minor encroachment onto constrained land was for the Planning Commission to review and approve it?

Answer: That is correct.

- **Question:** In Avalon, would an applicant have to have approval from the homeowners association before the City agreed to review the project?
Answer: Yes, I believe that the homeowners association approval is a prerequisite.
- **Question:** What was the difference, now, between a home that would be above the Toe of the Hill and a home below the Toe of the Hill? Would there be any distinction in how that was viewed or reviewed by the homeowners association?
Answer: He did not believe there would be any distinction, but it was up to the homeowners association to decide if they were to have a different level of review.
- **Question:** Had any changes been made concerning the use of materials with regard to Measure T? Conditions of Approval were already in place that spoke to the use of materials and how they needed to blend in with the hillside.
Answer: Typically, in hillside subdivisions, that had always been required.
- **Question:** Were the unknown factors, with regard to Measure T and to homes above the Toe of the Hill, to minimize visibility and what that meant, and as the home was seen from where and what those public places were. Was that not just an Avalon issue, but also a citywide issue, as Measure T was defined?
Answer: Correct.
- **Question:** So it was not so much the Toe of the Hill line, but the two elements of Measure T meant and what that difference would be in terms of how these houses were reviewed. It would not be the process, but would be a factor of the visibility, from where the house would be viewed and what was and was not allowed.
Answer: Correct.

Chairperson Weaver asked if a home was destroyed, could the homeowner rebuild in the original footprint, consistent with the original home and the height requirements.

Interim Planning Director Schwob responded that was what was being proposed. At this time, if that disaster happened today, it would be debatable as to what would be allowed.

Chairperson Weaver asked if a replacement home that was larger than 7,500 square feet were to be built, would the Measure T provision have to be adhered to, i.e. visibility.

Interim Planning Director Schwob stated that she was correct.

Commissioner Sharma asked if the Commission had the power to exclude Avalon and Ponderosa.

Senior Deputy City Attorney Seto stated that staff had proposed a set of principles to guide with drawing the Toe of the Hill line. The way that the line was drawn, based upon those principles, included parts of these Planned District developments. She asked if he was proposing that the principles upon which the Toe of the Hill line had been drawn should be changed or if he was proposing some other manner in which to exclude them.

Commissioner Sharma understood that where the line was drawn could not be changed and, if that was true, we can't change it.

Deputy Director Daniel explained that the line existed by virtue of the definition that was adopted through Measure T. If the Commission had a different location for that line, based upon different principles than staff had recommended, the Commission could recommend that to the City Council. Staff had made their best recommendation based

upon their best professional judgement and reasonable principles for a location of the line.

Commissioner Sharma asked if the Commission accepted that line, could Avalon and Ponderosa then be exempted.

Interim Planning Director Schwob assumed that he was asking if the Commission “could do it because you want to?” He did not believe an exemption would withstand the test. The City would likely be challenged. There would be no basis for the exemption and it would be overturned and everyone would be dealing with this issue, again.

Chairperson Weaver understood that, assuming that the Commission accepted that this was where the Toe of the Hill was and the line was drawn there, to carve out a section would be viewed as arbitrary and capricious.

Deputy Director Daniel stated that it would be considered arbitrary and capricious in the absence of some reasonable basis for doing that.

Chairperson Weaver asked if the Commission would have to create some reasonable definition that would move the line, based upon principles that the Commission would also have to create.

Deputy Director Daniel added that they would have to be consistent with Measure T.

Commissioner Harrison recalled that Measure T talked about a line from Union City-Fremont to the Milpitas border. Did it matter where the line was started and would two different results occur? Measure T was law and it seemed that no one could argue the 20 percent grade. However, the three assumptions were being questioned by the speakers and through e-mails that he had received. He asked if some outside validation for that line (by, perhaps three different consultants) would be a possibility. He wanted to be sure that when the line was drawn, it was correct and there were no challenges.

City Engineer Hughes replied that he did not believe so. The computer analysis did not draw the line starting from one point to another. Rather, it connected all of the 20 percent adjacent slopes and grade breaks. Regardless of where the line was begun, there would be one 20 percent line within Avalon and the other 20 percent line along I-680. A consultant would use the same principles and would come to the same conclusions. The only way to avoid affecting Avalon would be if the first 20 percent line were ignored. Averaging over a greater distance, as suggested by some of the speakers, had been used when the 1993 principles were created. That also created issues that the proponents for Measure T disagreed with, which was why a new definition had been created. A consultant could not use a different principle without guidance from the Commission and the City Council.

Commissioner Harrison agreed with City Engineer Hughes. He asked what would happen if three different resolutions were used.

Commissioner Natarajan supported Commissioner Harrison’s suggestion, not because the work done by staff was not valued. If it could be looked at in a different way by a representative from Avalon, someone who was involved with the writing of Measure T and staff, it might put an end to this dilemma. Especially, if it was likely that the same result would be reached.

City Engineer Hughes replied that if a consultant looked at averaging over a longer distance, the Toe of the Hill would, essentially, be moved to somewhere other than the

first 20 percent line. The suggestion was that if one measured over a long enough distance, the first 20 percent line would be missed.

Commissioner Natarajan asked if the first 20 percent grade was ignored and the second 20 percent was used, what would that do the Avalon community.

City Engineer Hughes replied that the line would be located generally at the back of the development.

Commissioner Natarajan asked if there was need to settle this issue within a certain length of time.

Interim Planning Director Schwob replied that Measure T was law. At this time, staff was interpreting the law as best it could, which meant that all projects that staff believed would be above the Toe of the Hill were to be reviewed by the Planning Commission.

Commissioner Natarajan stated that other issues, such as no definition had been made by the City as to what the elements or criteria were with regard to visibility and the definition of a public place, made it difficult for the Commission to render any decisions. Because those elements or criteria had not been defined, they could not be explained to an applicant until the applicant arrived at the end of the process. Should the performance standards and the criteria be developed first or in conjunction with defining the Toe of the Hill?

Interim Planning Director Schwob did not doubt that if enough time were taken, all of the people in attendance would come to an understanding of what the City was trying to do. However, for every person in attendance, there were probably five or more people who had not attended and who would have the same questions at a future meeting. He did not believe that absolutely black and white definitions could be reached.

Commissioner Natarajan believed that definitions would make what was expected clearer than it was at the current time. The first few projects could be looked at differently by requiring study sessions at the beginning of the process that would start the development of those criteria. Could the City hold off defining the Toe of the Hill line until after a few projects had gone through these iterations?

Interim Planning Director Schwob agreed that certain text amendments that would provide guidance could be recommended for approval by the Planning Commission and could be moved forward. No matter what was decided, it would not move forward to City Council until September because of the August recess.

Commissioner Sharma asked if a consultant could be given a copy of Measure T to allow him to devise his own principles by which to determine the Toe of the Hill.

City Engineer Hughes replied that the consultants would ask how to connect the two lines or would have to decide themselves how to do it. It was possible to connect the two lines further north than staff had done, which would include more of Avalon above the Toe of the Hill. Unless the words, "the first 20 percent line" were ignored, they would probably arrive at a conclusion similar to staff's.

Commissioner Sharma believed that it seemed there was a suspicion among the public that staff's Toe of the Hill line was not accurate and it might be a good idea to have someone else either confirm it or offer something different.

Commissioner Lydon was cautious about "setting ourselves up for the semi-annual review of the Toe of the Hill line," as it could change every time a group of people

decided they were not happy with its current location. He asked if the Commission had the authority to "sublet" that decision to someone who worked outside the City and who did not hold the same responsibility the Commission had concerning a recommendation to the Council. Would that third opinion be binding? Would the residents of Avalon and Ponderosa accept the line, if it turned out to be where staff had originally drawn it? When the Avalon and Ponderosa residents asked the Commission to "listen to the people," the Commission was truly attempting to listen to the people, who also included the people who had voted to approve Measure T, along with its ambiguities.

Commissioner Harrison agreed that the line should be drawn one time, only. The outside party should make a recommendation as an information item, on which the Commission would make a final decision.

Commissioner Lydon felt sure that the proponents of Measure T never anticipated the issue that the Commission was trying to decide. He was also sure that establishing the line would not preclude anyone from challenging it. The trump card was the 58 percent of the voters who approved Measure T and the Commission was bound to implement it, like it or not.

Chairperson Weaver stated that, in her opinion, the Commission's decision would be reviewed by other bodies and they might chose to make a different decision based upon different principles. The issue, for her, was that one must start from the first 20 percent grade, which was at I-680.

Vice-Chairperson Wieckowski asked that a recess be called to provide a break for the stenocaptioner. After the recess, he planned to offer a motion.

Chairperson Weaver reminded the public and the Commissioners that if this topic was still being discussed at 11:00 p.m., Item 3, Linda Vista, would not be heard. She called for a recess at 10:10 p.m.

Chairperson Weaver called the meeting back to order at 10:20 p.m. and asked the Commissioners if they wished to take Item 3 out of order. Some of the public who wished to speak on this item had childcare issues and had asked that it be continued to the next regularly scheduled meeting of August 26th.

Item 3. **LINDA VISTA - 2650 Bruce Drive – (PLN2004-00233)** - to consider a Rezoning from R-1-8 (Single Family Residential - 8,000 square foot minimum lot size) to R-1-6 (Single Family Residential – 6,000 square foot minimum lot size) for six acres of property in the Mission San Jose Planning area. A Mitigated Negative Declaration has been prepared and circulated for this project.

IT WAS MOVED (WIECKOWSKI/HARRISON) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION **CONTINUE TO AUGUST 26, 2004.**

The motion carried by the following vote:

AYES: 6 – Harrison, Lydon, Natarajan, Sharma, Weaver, Wieckowski
NOES: 0
ABSTAIN: 0
ABSENT: 1 – King
RECUSE: 0

Chairperson Weaver called for a resumption of the discussion concerning Items 1 and 2.

Vice-Chairperson Wieckowski noted that this was the third public hearing concerning these two items, and he appreciated the concerns and different points of view that had been expressed at this hearing. Consequently, he had changed his mind about some of the issues:

- Previously, he had felt that any additions made to homes above the Toe of the Hill should be brought before the Planning Commission, whether 300 square feet or 10,000 square feet. He now agreed with staff's recommendations, which were fair and would streamline the permit process.
- He also had previously felt that, if a catastrophe caused a home located above Toe of the Hill to be destroyed, the City was currently under no obligation to require that project to be rebuilt. Staff had thoughtfully proposed that people should be able to rebuild using the original footprint. If a resident wished to rebuild a larger home, and it was still less than 7,500 square feet, he now agreed that it was within the spirit of Measure T that they be allowed to do that. Above 7,500 square feet, the home would have to be reviewed and approved by the Planning Commission using the Measure T provisions.

Vice-Chairperson Wieckowski recognized that many of the public in attendance felt fear. However, the general populace expected the Planning Commissioners to do their jobs and they were also fearful that the Commission would take no action, essentially, ignoring their voices. The principles were fundamentally fair, clear and precise with regard to the first 20 percent grade line and should be adopted by the Planning Commission and recommended to the City Council. He made a motion concerning Item 2, below.

Item 2. HILL AREA GENERAL PLAN AND ZONING CHANGES - Citywide - (PLN2004-00030)

- to consider General Plan land use map and zoning ordinance and Hill Area Development Policy changes and rezonings for various parcels in the Hill Area and along the base of the hills to: (1) delete Development Reserve Overlay (D.R.O.) district from the zoning map, (2) rezone parcels from R-1-80 and R-1-160 (Single-Family Residential Districts) to O-S (Open Space District) (3) Revise the definition of the Toe of the Hill (4) rezone all or portions of properties located above and along the base of the Toe of the Hill line from R-1 (Single-Family Residential) and A (Agricultural) Districts to an O-S (Open Space) District or to an R-1 district for those properties which become located below the Toe of the Hill because of changes in the alignment of the Toe of the Hill line; (5) incorporate relevant provisions of the Development Reserve Overlay and Hill Policy into the Hillside Combining (H-I) district and Open Space (O-S) district regulations and (6) incorporate a map into the General Plan showing extent of land outside the City affected by the implementation of the Hill Initiative of 2002 (Measure T). A Negative Declaration has been prepared and circulated for this project.

AMENDED EXHIBITS:

Exhibit "A" General Plan Land Use Map Amendments and Exhibit "B" Rezoning Maps – exchange pages 578-C-388 and 578-C-400 for the revised Toe of the Hill line for the Mission Clay Products site on Old Canyon Road in the Niles district.

Vice-Chairperson Wieckowski read, "The General Plan Land Use Map Amendment is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the General Plan as enumerated within the staff report and as referenced in the Hill Area Initiative of 2002 (Appendix 2);

and
Recommend the City Council approve amendments to the General Plan land use designations for properties along and above the Toe of the Hill line in conformance with Exhibit "A" (General Plan Land Use Map Amendments);

and
Find the Rezoning are in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan Land Use chapter that were enacted by the passage of Measure T (the Hill Area Initiative of 2002) on November 5, 2002;

and
Recommend the City Council introduce an ordinance adopting Exhibit "C" (Rezoning Maps)."

Interim Planning Director Schwob stated that by approving Item 2, the Commission would be recommending the adoption of a set of zoning maps and a set of General Plan maps, plus the colorful map on the wall behind the Commissioners. These maps were based upon the location of the Toe of the Hill line, which was Item 1. In essence, approval of this item would also provide approval for the definition of the Toe of the Hill line.

Deputy Director Daniel added that Recommendation No. 7 was omitted when the motion was made.

Vice-Chairperson Wieckowski agreed that she was correct.

IT WAS MOVED (WIECKOWSKI/) AND DIED FOR LACK OF A SECOND THAT THE PLANNING COMMISSION APPROVE THE FINDINGS, AS SET FORTH IN THE STAFF REPORT.

Commissioner Natarajan agreed with most of Vice-Chairperson Wieckowski's comments. Staff had done an excellent job in trying to interpret the Measure T language. Of concern, was the lack of clarity or understanding of some of the implications of what this meant. She knew that staff had met with the community groups to answer their questions and she recognized that it could go on forever and ever. It seemed clear that the fear and uncertainty expressed by the public was due to not understanding the responses by staff. She suggested, again, that Exhibit 5 [Questions & Answers] be made available to everyone, because it clarified most of the issues that had been brought up tonight. She did not believe that the Toe of the Hill would provide the distinguishing factor that would raise or lower property values. She was absolutely satisfied that staff's recommendations were the right thing to do. She suggested that staff's recommendations be approved, so that these items could move forward to City Council for approval. However, before it was approved by the City Council, another meeting with the community members should be held where staff could walk through the process and clarify some of the elements brought up at this hearing. The City Council could then chose to bring in an outside consultant to ascertain if there was any other way of interpreting the Toe of the Hill line.

Chairperson Weaver asked if she was making a motion to approve Item 1 with the recommendation (as stated above) to City Council.

Vice-Chairperson Wieckowski asked if the motion could include allowing the Planning Commission to adopt criteria and performance standards in the hillside area.

It was decided to move concerning just Item No. 2.

Commissioner Lydon asked for one more clarification.

Commissioner Natarajan moved that the Commission approve staff's recommendations to City Council with the additional requirements that before City Council heard the recommendations, a meeting be held with staff and interested parties, including the homeowners associations of Avalon and Ponderosa homes, specifically. The City Council should consider, before its adoption of the recommendations, obtaining a third-party review of the principles that were used to arrive at the recommended Toe of the Hill line.

Vice-Chairperson Wieckowski asked if proponents of Measure T should also be included in the meeting.

Commissioner Natarajan replied, "Absolutely."

Commissioner Harrison expressed concern that, just recommending that an outside consultant perform a review of the Toe of the Hill line, it might not happen.

Chairperson Weaver reminded him and the public that the Commission could only recommend that the City Council consider hiring an outside consultant. She suggested that the members of the public should attend that meeting and express their opinions, as they had during all of the Planning Commission's public hearings.

Commissioner Lydon asked if Item 2 were approved, did that presuppose that Item 1 had also been approved.

Senior Deputy City Attorney Seto stated that the Commission could proceed with such a motion on Item No. 2. "A subsequent motion on Item No. 1 could leave just a recommendation with regard to those exhibits related to the Toe of the Hill line principles and your recommendation to Council might be in conjunction with the potential outside third-party consultant reviewing those principles that those principles might be amended to reflect that or other types of study."

Commissioner Harrison asked that Senior Deputy City Attorney Seto's comments be added to the motion, if acceptable to the maker of the motion.

Commissioner Natarajan, the maker of the motion, agreed.

Deputy Director Daniel suggested that one way to handle the Toe of the Hill line was to recommend peer review when making the motion for Item 1.

IT WAS MOVED (NATARAJAN/WIECKOSKI) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

PRIOR TO CITY COUNCIL CONSIDERATION OF THIS ITEM, STAFF HOLD A MEETING WITH INTERESTED PARTIES INCLUDING BUT NOT LIMITED TO THE AVALON AND PONDEROSA HOMEOWNERS ASSOCIATIONS AND THE PROPONENTS OF MEASURE T TO ANSWER QUESTIONS AND CLARIFY THOSE RESPONSES TO IMPROVE UNDERSTANDING OF THE PROPOSAL;

AND

THAT PRIOR TO CONSIDERING THE REMAINING RECOMMENDATIONS THAT THE CITY COUNCIL CONSIDER OBTAINING A THIRD-PARTY REVIEW OF THE PRINCIPLES AND A PHYSICAL DRAWING OF LINE THAT WERE USED TO ARRIVE AT THE RECOMMENDED TOE OF THE HILL LINE;

AND

RECOMMEND THE CITY COUNCIL FIND THE INITIAL STUDY HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -- EITHER

INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

RECOMMEND THE CITY COUNCIL APPROVE THE DRAFT NEGATIVE DECLARATION WITH ACCOMPANYING CERTIFICATE OF FEE EXEMPTION AND FIND IT REFLECTS THE INDEPENDENT JUDGEMENT OF THE CITY OF FREMONT;

AND

FIND PLN2004-00030 GENERAL PLAN LAND USE MAP AMENDMENT (EXHIBIT A), IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN AS ENUMERATED WITHIN THE STAFF REPORT AND AS REFERENCED IN THE HILL AREA INITIATIVE OF 2002 (APPENDIX 2);

AND

RECOMMEND THE CITY COUNCIL APPROVE AMENDMENTS TO THE GENERAL PLAN LAND USE DESIGNATIONS FOR PROPERTIES ALONG AND ABOVE THE TOE OF THE HILL LINE IN CONFORMANCE WITH EXHIBIT "A" (GENERAL PLAN LAND USE MAP AMENDMENTS);

AND

RECOMMEND THE CITY COUNCIL ADOPT EXHIBIT "B" (MAP OF EXTENT OF LANDS AFFECTED BY THE 2002 HILL AREA INITIATIVE (MEASURE T)) TO BE INSERTED WITHIN THE GENERAL PLAN TEXT;

AND

FIND THE REZONINGS ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN LAND USE CHAPTER THAT WERE ENACTED BY THE PASSAGE OF MEASURE T (THE HILL AREA INITIATIVE OF 2002) ON NOVEMBER 5, 2002;

AND

RECOMMEND THE CITY COUNCIL INTRODUCE AN ORDINANCE ADOPTING EXHIBIT "C" (REZONING MAPS).

The motion carried by the following vote:

AYES: 6 – Harrison, Lydon, Natarajan, Sharma, Weaver, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 1 – King

RECUSE: 0

Discussion ensued concerning Item 1 and the Commission's recommendation to City Council.

Commissioner Natarajan complimented staff on the creation of the submittal requirements to help staff and the Commission to evaluate a lot of the issues. She knew that the Floor Area Ratio (FAR) would be difficult to define, along with what minimizing visibility and visual impact meant and the issue of the usable yard space. If the usable yard space in a project was less than two percent, she asked if that was justification for the Commission to review it and to make a decision that it did not meet "what criteria?" She was hoping for some sort of evaluation criteria or a matrix that clarified what did and did not comply with the intent of Measure T. Some definition needed to be created concerning what public spaces were. She foresaw many of these same issues coming back to the Commission without a clear definition of the criteria. Size of the house was a big issue. Allowing houses of a 10,000 square foot minimum on a 20-acre parcel with no other criteria was not enough, because size had a direct impact on the visual impact and visibility of a project. Other issues of interest included:

- **Staff Report, Page 9, Policy 6.16, Item 2:** How could a parcel line be drawn based upon visibility? What was the standard used to evaluate it?

Interim Planning Director Schwob replied that wording was directly from Measure T.

City Engineer Hughes replied that a buildable area could be created on a parcel, depending on how the parcel lines were drawn, that would be very visible, but if the parcel were in a different area, the buildable area would be not as visible.

Commissioner Natarajan argued that it would not be a black and white situation, but shades of gray. It was necessary that evaluation criteria be put in place so that everyone was using the same set of standards when projects came forward in the future.

- **Staff Report, Page 10:** “To the extent practicable, structures should be located that it minimized visibility from public places.” That needed to be defined further, because, currently, it was a struggle to define.
- **Staff Report, Item No. 5:** Appropriate landscaping, especially in the hills, needed a clearer definition so that, again, everyone knew what it meant.
- **Submittal Criteria:** A more positive statement should be made, such as “More substantially increased our need to protect the hills,” rather than “reduced the development potential.”
- **Written Statement required from the applicant:** An example of what was expected in the statement from the applicant or be specific about some of the issues that would need to be addressed.
- **FAR:** Some mechanism needed to be defined so that the intent of Measure T was complied with.

Vice-Chairperson Wieckowski asked if the motion should include a request that City Council direct staff to develop the evaluation criteria for the issues mentioned above to bring back to the Planning Commission for review. He agreed that Exhibit 5 was a good start, but was not enough.

Chairperson Weaver noted a correction on the staff report, page 10, Item 7, second line: add “s” to . . . except for building that must be located outside the envelope . . .

Commissioner Lydon asked if this recommendation should reach the Council at the same time as the previous recommendation.

Interim Planning Director Schwob stated that it would be extremely helpful.

Vice-Chairperson Wieckowski made the motion and added the identical language as stated above concerning the independent consultant to perform peer review, hold another meeting with interested parties and direct staff to develop performance standards and evaluation criteria, including the size of the structures allowed to be built in the Hill Area, as set forth by Commissioner Natarajan.

Commissioner Harrison noted that page 6, fifth paragraph, stated, “. . . from Fremont/Union City to the Alameda County/Santa Clara County border.” He asked, for

the record, if it answered the question concerning the drawing of the two Toe of the Hill lines and joining them somewhere in the middle. He read the statement that specifically stated that the line should be drawn from Point A to Point B, left to right (as shown on the map) versus drawing the two lines from each end and meeting somewhere in the middle.

IT WAS MOVED (WIECKOWSKI/NATARAJAN) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

AND

PRIOR TO CITY COUNCIL CONSIDERATION OF THIS ITEM, STAFF HOLD A MEETING WITH INTERESTED PARTIES INCLUDING BUT NOT LIMITED TO THE AVALON AND PONDEROSA HOMEOWNERS ASSOCIATIONS AND THE PROPONENTS OF MEASURE T TO ANSWER QUESTIONS AND CLARIFY THOSE RESPONSES TO IMPROVE UNDERSTANDING OF THE PROPOSAL;

AND

THAT PRIOR TO CONSIDERING THE REMAINING RECOMMENDATIONS THAT THE CITY COUNCIL CONSIDER OBTAINING A THIRD-PARTY REVIEW OF THE PRINCIPLES AND A PHYSICAL DRAWING OF LINE THAT WERE USED TO ARRIVE AT THE RECOMMENDED TOE OF THE HILL LINE;

AND

RECOMMEND THE CITY COUNCIL FIND THE INITIAL STUDY HAS EVALUATED THE POTENTIAL FOR THIS PROJECT TO CAUSE AN ADVERSE EFFECT -- EITHER INDIVIDUALLY OR CUMULATIVELY -- ON WILDLIFE RESOURCES. THERE IS NO EVIDENCE THE PROPOSED PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES;

AND

RECOMMEND THE CITY COUNCIL APPROVE THE DRAFT NEGATIVE DECLARATION WITH ACCOMPANYING CERTIFICATE OF EXEMPTION AND FIND IT REFLECTS THE INDEPENDENT JUDGEMENT OF THE CITY OF FREMONT;

AND

FIND PLN2004-00029 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND NATURAL RESOURCES CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THIS ZONING TEXT AMENDMENT BECAUSE THE ZONING TEXT NEEDS TO COMPLY AND IMPLEMENT THE CHANGES TO THE GENERAL PLAN APPROVED BY THE ELECTORATE VIA THE HILL AREA INITIATIVE OF 2002 (MEASURE T);

AND

RECOMMEND THAT THE CITY COUNCIL ADOPT AN ORDINANCE (ZONING TEXT AMENDMENTS) IN CONFORMANCE WITH EXHIBITS A-1 THROUGH A-18;

AND

RECOMMEND THAT THE CITY COUNCIL ADOPT A RESOLUTION TO RESCIND THE HILL AREA DEVELOPMENT POLICY AS THE PROVISIONS ARE OUTDATED AND ARE NOW INCORPORATED WITHIN THE PROPOSED ZONING TEXT AMENDMENTS;

AND

RECOMMEND THAT THE CITY COUNCIL DIRECT STAFF TO PREPARE REVISIONS TO THE HILLSIDE STREETS POLICY;

AND

RECOMMEND THAT THE CITY COUNCIL DIRECT STAFF TO DEVELOP ADDITIONAL PERFORMANCE STANDARDS / EVALUATION CRITERIA AND DEFINITIONS TO CLEARLY SET FORTH EXPECTATIONS FROM APPLICANTS AND TO IMPROVE THE PROJECT REVIEW PROCESS. DEFINITIONS/TERMS TO WORK

ON INCLUDE: "PUBLIC PLACES", "TO THE EXTENT PRACTICABLE" AND "APPROPRIATE LANDSCAPING FOR THE HILL AREA". EVALUATION CRITERIA TO WORK ON INCLUDE: 1) THE SIZE OR FLOOR AREA RATIO (FAR) ALLOWED FOR STRUCTURES IN THE HILL AREA, 2) USABLE OPEN SPACE AND 3) EXPLANATION OF THE CRITERIA USED IN CONSIDERING IF A LOT LINE ADJUSTMENT IS APPROPRIATE AS IT RELATES TO BUILDABLE AREAS AND VISIBILITY FROM PUBLIC PLACES ON LOTS IN QUESTION;

AND

WITH REGARD TO THE PROPOSED APPLICATION SUBMITAL FORMS, REQUEST THAT STAFF INCLUDE A SAMPLE OF THE TYPE OF INFORMATION THAT IS EXPECTED TO GUIDE FUTURE APPLICANTS WITH THEIR SUBMITTALS.

The motion carried by the following vote:

AYES: 6 – Harrison, Lydon, Natarajan, Sharma, Weaver, Wieckowski

NOES: 0

ABSTAIN: 0

ABSENT: 1 – King

RECUSE: 0

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
- Discussion regarding cancellation of the December 9, 2004 Planning Commission meeting. Dates to consider: December 2nd, 6th, and 13th.

Interim Planning Director Schwob explained that the scheduled date for the meeting in December was the 9th but that it conflicted with the Mayor's farewell event.

Chairperson Weaver asked how many Commissioners could meet on Thursday, December 2nd, Monday, December 6th, or Monday, December 13th. She announced that five people indicated that they could meet on Thursday, December 2nd; two people indicated that they could meet on Monday, December 6th and two people indicated that they could meet on Monday, December 13th. She announced that the December meeting of the Planning Commission would meet on Thursday, December 2nd.

- Information from Commission: Commission members may report on matters of interest.

Commissioner Lydon suggested that concerning the future meeting between City staff and all interested parties, including the Avalon and Ponderosa residents, that the issues posed by the public at this hearing and the answers be video taped to allow all parties to view it before the meeting. Hopefully, some of the fear expressed tonight would be eliminated before the next meeting with staff and the parties.

Vice-Chairperson Wieckowski agreed and suggested that an abridged version of the video being taped at this time be provided.

Commissioner Lydon clarified that a video be made of staff sitting at a table with someone stating the questions brought up at this meeting and other staff providing the answers.

Chairperson Weaver stated that she was incorrect when she stated at the last meeting that this was her last year as a Commissioner. She would be a member of the Planning Commission through December 2005.

Meeting adjourned at 11:05 p.m.

SUBMITTED BY:

Alice Malotte
Recording Clerk

APPROVED BY:

Jeff Schwob, Secretary
Planning Commission